IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4406 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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H. A. VYAS - Petitioner
Versus
STATE OF GUJARAT & 1 - Respondents

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Appearance :
MR DIPAK C RAVAL for Petitioner.
MR LB DABHI, AGP for Respondent No. 1.
FRESH NOTICE REQD(N) for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 01/02/2006

ORAL JUDGMENT

1.The petitioner has filed this petition under Article 226 of the Constitution of India praying for quashing and setting aside the order dated 30.06.1987 whereby the petitioner was superseded and the petitioner's case for promotion to the Class – I post in the cadre of Superintendent of Land Records, in the order of his seniority was not considered and the petitioner was not promoted to the post from the date his immediate juniors were promoted to the said post. The petitioner has also prayed for the direction to the respondents to confer upon the petitioner all the benefits of the Class – I post of Superintendent of Land Records, including the benefits of salary, seniority, pay fixation, future promotions, pensionary benefits etc. on the footing that the petitioner was promoted to the said post on the date on which his juniors were promoted.

2.The court has issued notice on 03.09.1987 and ordered that one post of Superintendent of Land Records to be kept vacant. The petition was thereafter admitted on 21.03.1988 and the Court has observed that the interim relief could not be granted as it was futile and also against public interest to ask the respondents to keep one post vacant. The interim relief was, therefore, refused.

3.It is the case of the petitioner that the petitioner joined the services as a Surveyor in March, 1951. The petitioner passed the compulsory departmental examination of S.S.D. In the year 1953. The petitioner has also passed the Land Records Qualifying Examination in April, 1967 at the very first attempt and the petitioner ranked first in the State in the said examination and was given a special award for the same by Govt. Resolution dated

04.12.1968. The petitioner was very meritorious in passing the examinations and his services were appreciated from time to time. By a letter dated 31.03.1982, the Deputy Director of Land Records appreciated the service of the petitioner. Similarly, the Collector of Sabarkantha by his letter dated 16.08.1983 appreciated the service of the petitioner in running the District administration. Between 1953 to 1976, the petitioner received as many as four promotions to the various Class III posts. All the promotions were given according to his seniority and merit and efficiency. In the year 1976, the petitioner was promoted to the gazetted Class II post on the basis of his seniority and merit and efficiency. However, between 1981 to 1985, there were three adverse confidential reports given to the petitioner. All these three reports are absolutely irrelevant and the same should not have been

considered as adverse. The adverse confidential reports of the petitioner did not make any adverse comment against the petitioner on any of the relevant points covered and make general and vague remarks.

4.Mr. Dipak C. Raval, learned advocate appearing for the petitioner has submitted that all the three remarks were absolutely vague and did not show anything. The said remarks show complete non-application of mind. The confidential reports of the petitioner's cadre could be written, reviewed and communicated only by the Settlement Commissioner. However, in the present case, the confidential reports were written by the Collector and only communicated by the Settlement Commissioner. He has further submitted that after filing of the petition and after issuance of the notice by this Court, the petitioner was informed that his representation made against the adverse

confidential remarks for the year 1983-84 was rejected. The said communication was amounting to a non-speaking order and does not deal with the contentions of the petitioner. The said order was passed belatedly, only with a view to justify the supersession of the petitioner which was already challenged before this Court. The idea of communicating the adverse confidential remarks and then considering representation against the same is that an employee has an opportunity of overcoming the alleged defects. So far as the petitioner is concerned, the petitioner was not told as to why his representation was rejected and the rejection was communicated to him nearly four years after the end of the period for which the confidential remarks were written. He has, therefore, submitted that such a procedure is clearly an abuse of the system of writing annual confidential reports and considering them for selection and appointment to the

higher posts. This would only show the malafide of the concerned authorities in creating the record to justify the decision of the petitioner's supersession which was already taken. The adverse confidential remarks against which his representation was pending has been considered and relied upon against the petitioner without considering his representation. He has, therefore, submitted that the standard adopted for promotion and the procedure followed in the petitioner's case and of his colleagues may be accurately ascertained and tested on the touch-stone of Articles 14 & 16 of the Constitution of India and it is clearly in violation of Articles 14 & 16 of the Constitution of India.

5.Mr. Raval has further submitted that in the latest seniority list of Class II Officers as on 01.11.1985, the petitioner was at Serial No. 57. By an order dated 30.06.1987, several of

his colleagues were promoted including two of his juniors, namely, Shri B.K. Bhaiya who was at Sr. No. 58 & Shri G.S. Patel who was at Sr. No. 63, to the higher Class I post. He has, therefore, submitted that absolutely discriminatory and arbitrary approach was adopted by the respondent authorities. Despite the fact that the petitioner was having absolutely clean and meritorious record of service of more than 36 years and the alleged adverse confidential remarks against him were only during the period from 1981 to 1985. If one goes into the true nature of the confidential remarks, it is obvious that they are really not adverse and they show only the predilection of this or that superior officer. Such confidential report can hardly be a basis for denying promotion to a conscientious and honest officer like the petitioner who was on the verge of retirement. The denial of promotion on the basis of such

adverse confidential reports, clearly shows non-application of mind and hence, the supersession of the petitioner on such a procedure was bad in law.

6.Lastly, Mr. Raval has submitted that the petitioner was 57 years of age at the time of filing of the petition and he has to serve 15 months before retirement from service. The petitioner has been superseded without proper fixation of seniority and without proper consideration of relevant material and on the basis of adverse confidential reports which should not have been considered. Mr. Raval has, therefore, submitted that the reliefs prayed for in the petition may be granted.

7.In support of his submission, he relied on the decision of the Hon'ble Supreme Court in the case of *M.A. Rajasekhar V/s. State of Karnataka and another, (1996) 10 S.C.C. 369* wherein the

Hon'ble Supreme Court has held that it is now settled that the object of making adverse remarks is to assess the competence of an officer on merits and performance of an officer concerned so as to grade him in various categories as outstanding, very good, good, satisfactory and average, etc. The competent authority and the reviewing authority have to act fairly or objectively in assessing the character, integrity and performance of the incumbent. The Court has further observed that the integrity of the appellant in that case was not doubted and his work was also in all respects was found satisfactory. Under those circumstances, the remark that he “does not act dispassionately when faced with dilemma” must be pointed out with reference to specific instances in which he did not perform that duty satisfactorily so that he would have an opportunity to correct himself of the mistake. He should be given an opportunity in the cases

where he did not work objectively or satisfactorily. The Court found that admittedly, no such opportunity was given. Even when he acted in a dilemma and lacked objectivity, in such circumstances, he must be guided by the authority as to the manner in which he ought to have acted upon. Since this exercise has not been done by the respondents, the said adverse remarks was not consistent with law and accordingly, the adverse remarks stood expunged.

8. Based on the aforesaid decision, Mr. Raval has submitted that the authority should have expunged the remarks and should have considered the case of the petitioner for promotion to Class I post especially when the case of the junior to the petitioner was considered and promotions were granted to them vide order dated 30.06.1987.

9. On behalf of the respondents, an affidavit-in-reply is filed by Under Secretary, Revenue Department. Mr. L.B. Dabhi, learned Assistant Government Pleader appearing for the respondent has submitted that the petitioner's request to remove adverse remarks kept in the confidential report for the period from June 1981 to 31st March 1982 by the then Collector, Sabarkantha was considered by the Govt. and the Govt. has decided not to remove the adverse remarks made in the petitioner's service record and accordingly his request was rejected on 20/12.12.1982. He has further submitted that the representation of the petitioner dated 22.08.1984 was pending but this fact was considered by the Selection Committee in its meeting dated 21.02.1987 and further the Govt. had decided to keep the case of the petitioner for promotion to Class I post as 'open'. The petitioner has received adverse remarks for three times in four years i.e. from June 1981

to March 1985 and the petitioner's request for removal of last adverse remarks in the year 1984-85 was rejected by the Government and the petitioner did not challenge that decision anywhere and, therefore, it is not open to the petitioner to challenge the validity of the adverse remarks at this stage. He has further submitted that in view of the said adverse remarks, the petitioner was not found fit for promotion to Class I and, therefore, his case was superseded by the Selection Committee for promotion to the Class I post in the Land Records department, which had met on 15.10.1986 and again on 21.02.1987 had considered all the three years confidential reports for the years 1981 to 1985 containing adverse remarks to consider him fit for promotion to Class I post, but pending the finalization of his representation dated 22.08.1984, the Govt. decided to keep the case of the petitioner as 'open'.

10.Mr. Dabhi has further submitted that the petitioner was having adverse confidential remarks and except one, his request for expunging the same were rejected by the Govt. and in view of this fact, the petitioner was not promoted on higher post but in view of the fact that one representation was pending, his case was decided to be kept open to be considered for promotion. He has, therefore, submitted that in view of the fact that the petitioner's case was kept open for consideration for promotion to Class I post by a decision dated 30.10.1987, the petition is required to be dismissed.

11.After having heard learned advocates appearing for the respective parties and after having gone through the contents of the petition as well as affidavit-in-reply and after considering the law laid down by the Hon'ble

Supreme Court as well as by this Court with regard to the effect and implications of the adverse remarks in confidential reports while considering the case of the employee for further promotion, the Court is of the view that it is true that there are three adverse remarks between the period from 1981 to 1985 and it is also true that the petitioner's representation for expunging the said adverse remarks were rejected, except one representation which is pending. However, when the representation is pending, for such an ordinate period i.e. for 4 years in the present case, the action of the respondent authorities cannot be treated as just and proper. If the adverse remarks are made in the year 1984-85 and the case for promotion was considered in 1987, the respondent authorities are under an obligation to decide the representation and to come to a conclusion and it must be communicated to the petitioner. Without

deciding the representation and without communicating the decision, if the adverse remarks are considered and promotion is denied to the petitioner, it is clearly in violation of the settled legal position. The Court is also of the view that the adverse remarks made against the petitioner are not in respect of efficiency or integrity of the petitioner but they are of casual nature and are more or less of relative nature of the concerned authorities. It appears that in the present case, last promotions were given to the Class II Officers on 30.06.1987 and the petitioner was denied the promotion to Class I post simply on the basis of the alleged adverse remarks. Even juniors to the petitioner were given promotion. Looking to the entire previous history of the petitioner and considering his entire service record as found from the pleadings of the petitioner and not controverted by other side, the Court is of the

view that promotion denied to the petitioner was not just and proper and the respondent authorities should have given promotion to the petitioner along with other Class II Officers on 30.06.1987. The respondent authorities are, therefore, directed to grant the deemed date of promotion to the petitioner w.e.f. 30.06.1987 and grant all consequential benefits to the petitioner. Since the petitioner has already retired, necessary orders may be passed with regard to grant of retiral and pensionary benefits forthwith.

12.In the above view of the matter, the petition is allowed. Rule is made absolute to the above extent without any order as to costs.

[K.A. PUJ, J.]

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